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No. 418

In the Supreme Court of the United States

OCTOBER TERM, 1959

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO AND LOCAL NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
A. The Board's findings and conclusions	2
B. The Board's order	6
C. The decision of the Court of Appeals	7
Argument	7
Conclusion	9

CITATIONS

Cases:

Federal Trade Commission v. *Mandel Bros., Inc.*, 359 U.S. 385	7, 8, 9
Jacob Siegel Co. v. *Federal Trade Commission*, 327 U.S. 608	7, 8
National Labor Relations Board v. *Express Publishing Co.*, 312 U.S. 426	7
National Labor Relations Board v. *Local 926, International Union of Operating Engineers, AFL-CIO*, 267 F. 2d 418	9

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*)	
Section 7	7
Section 8(b)(1)(A)	2, 6

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 40a)[1] is reported at 266 F. 2d 823. The Board's Decision and Order (Pet. App. 41a) are reported at 120 NLRB 684.

JURISDICTION

The judgment of the Court of Appeals was entered on May 14, 1959 (Pet. App. 40a), and a peti-

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[1] "Pet. App." refers to petitioners' appendices filed in this Court.

tion for rehearing was denied on June 26, 1959 (Pet. App. 40a). The petition for a writ of certiorari was filed on September 22, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board, in ordering petitioners to cease and desist from coercing and restraining not only the employees of the Ohio Consolidated Telephone Company, but employees of any other employer in the exercise of rights guaranteed by Section 7 of the National Labor Relations Act, acted within its allowable discretion to select an appropriate remedy.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are set forth in petitioners' appendices (Pet. App. 1a-5a).

STATEMENT

A. *The Board's findings and conclusions.*—The Board found that petitioners (a national labor union and its affiliated local), in violation of Section 8 (b)(1)(A) of the Act, engaged in coercive conduct, violence, threats and misconduct during the course of a strike against the Ohio Consolidated Telephone Company ("Company"), and thereby restrained and coerced employees in the exercise of their right to refrain from or discontinue participation in the strike. The subsidiary facts upon which the Board based its findings are summarized below.

Negotiations between Communications Workers of America ("CWA"), its Local No. 4372 and the Company for a new contract having been unsuccessful, Company employees went on strike on July 14, 1956, when the old contract expired (B.A. 6a; 86a-87a).[2] The Company continued to operate with the assistance of its clerical and professional employees and of personnel who normally perform supervisory functions for the Company or for affiliated corporations, but who performed the work of rank and file employees during the strike (B.A. 80a; 98a-100a, 111a, 113a-114a, 123a, 127a, 137a-138a, 142a-143a, 163a-167a, 170a-172a, 176a-177a, 188a, 194a, 209a, 214a). During the course of the strike the unions engaged in many incidents of coercive conduct, violence and threats designed to impede the Company's operations and to intimidate the personnel engaged in such operations.

On July 18, 1956, strikers followed District Manager Matz and Foreman Kerns who were riding in a Company truck to Matz's home (B.A. 16a, 78a; 148a, 165a) and gathered in a group near Matz's house. Matz was warned to stay in his house and he did not return to the Company telephone exchange until police arrived on the scene (B.A. 149a-150a, 165a). The following day strikers blocked the exit gate to the Company parking lot and prevented the egress of the same Company personnel until police arrived about 30 minutes later (B.A. 17a, 78a; 145a-148a). Strikers at the time also made threats to

[2] "B.A." refers to the Board Appendix filed with the court below.

Supervisor Beasley who was within the parking lot and was attempting to take pictures of the strikers (B.A. 17a, 78a; 147a).

On the afternoon of July 29, Supervisors Newman and Meyers escorted Patricia Bauer, who had been employed in a supervisory capacity by another telephone company, to one of the Company's exchanges which was being picketed. Pickets refused to allow Bauer to enter the Company building (B.A. 20a, 78a; 133a-139a). On the evening of the same day Company officials again attempted to escort Bauer into the exchange. Pickets walked in a "close circle" blocking the entrance to the building, and told Company personnel that no strangers like Bauer who came from out of town should go in the building (B.A. 21a-22a, 78a-79a; 101a-105a, 300a-303a, 309a-314a). Later, with police aid, Bauer was permitted to enter.

On July 30, 1956, strikers who were picketing company exchanges at New Boston and Sciotoville prevented Company personnel from entering the building to deliver supplies (B.A. 22a-23a, 79a; 127a-133a; 139a-141a, 372a-373a). Police talks with the strikers failed to gain entrance for the Company personnel. At about the same time, pickets prevented employee Maynard from entering the Sciotoville exchange until escorted in by police (B.A. 24a, 79a-80a; 114a-118a, 122a, 126a).

On August 13, Ghearing and Foster, who normally performed supervisory work for another telephone company affiliated with Ohio Telephone Consolidated, drove with District Manager Matz to a farm outside

the city limits to repair a cable (B.A. 26a, 79a, 177a). Pickets appeared and called Ghearing and Foster obscene names and told them "You fellows better get * * * out of town. * * * If you don't get out of here tonight you will be sorry. If you have any concern for your family, you will leave" (B.A. 26a-27a, 79a, 185a, 152a-153a, 178a). Several strikers followed Ghearing and Foster to a local restaurant where a much larger group of strikers subsequently appeared. Strikers made several inquiries as to whether Ghearing and Foster were leaving town (B.A. 28a, 79a; 180a, 167a-168a, 155a). When the two men left the restaurant and got into a car, the strikers and a group of unidentified persons rushed the car, rocked it and overturned it (B.A. 29a, 79a; 168a, 255a-258a, 272a-275a, 168a, 180a-181a, 356a-357, 183a-184a, 479a).

On August 22, a striker threatened a Company repairman with violence for taking photographs (B.A. 31a, 79a; 318a, 190a-193a, 243a-244a, 285a-286a, 334a, 315a, 349a-350a). On the following day, strikers appeared where a number of Company supervisors were making repairs. One striker was heard to remark that he "was going to get a little blood and hair" on the pick handle he was carrying (B.A. 34a, 79a, 282a, 208a-209a, 385a-386a). The next day, strikers followed Company men to a rural area and made insulting remarks to the workmen and called them vile names (B.A. 79a; 160a).

On September 18, strikers picketed Company personnel making repairs. A fight between the Company men and the strikers ensued (B.A. 45a, 79a,

259a-260a). Eventually, the strikers, outnumbering the Company personnel, forced all the Company men to retreat from the scene in their trucks (B.A. 45a, 79a, 261a, 342a). Several Company men received treatment at the local hospital (B.A. 219a, 225a).

During the course of the strike, petitioner CWA supported the activities of its local, paying strike benefits to strikers, providing bail for strikers jailed for misconduct and continuing publicly to espouse the strikers' cause (B.A. 195a-198a, 204a-205a, 212a-213a, 486-492a).

Employees were well aware of the dangers to which anyone seeking to work during the strike might be subjected. The events summarized above were publicized in the local newspapers, over the radio, and in a national magazine article, reproductions of which the Company sent to its subscribers to explain why they were not getting service (B.A. 13a-14a; 183a-185a, 226a-203a, 174a-176a, 237a-240a, 329a, 475a-485a, 499a-535a). Moreover, these events were described by witnesses in local court proceedings attended by a number of employees (B.A. 14a-15a; 154a-155a, 157a-158a, 183a, 190a, 222a-224a).

Upon the basis of the foregoing facts, the Board concluded that petitioners' misconduct restrained and coerced employees in the exercise of their statutory right to refrain from or discontinue participation in the strike, and, therefore, violated Section 8(b)(1)(A) of the Act.

B. *The Board's Order.*—The Board's order (Pet. App. 41a) requires petitioner unions to cease and

desist "from in any manner restraining or coercing employees of the Ohio Consolidated Telephone Company or any other employer in the exercise of the rights guaranteed in Section 7 of the Act," and to post appropriate notices.

C. *The decision of the Court of Appeals.*—The Court of Appeals, in a *per curiam* opinion (Pet. App. 40a), affirmed the Board's findings as adequately supported by the record. It enforced the Board's order, after deleting the words "in any manner."

ARGUMENT

Petitioners' sole contention is that the Board's order as enforced is too broad because it requires them to cease and desist from restraining and coercing not only employees of the Company, but also employees of any other employer, in the exercise of the rights guaranteed in Section 7 of the Act. It is settled, however, that the Board may fashion its order to enjoin not only the particular unfair labor practice found but also like or related acts which may be anticipated from the wrongdoer's past misconduct. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 436. The scope of such orders "depends on the facts of each case and a judgment as to the extent to which a particular violator should be fenced in," and a reviewing court "sit[s] only to determine if the trier of facts has exercised an allowable discretion." *Federal Trade Commission* v. *Mandel Bros., Inc.*, 359 U.S. 385, 392-393; see *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 611-613.

Accordingly, the Court of Appeals' ruling on the narrow issue here presented—whether "on the facts of [this] case" (*Mandel, supra*) the Board made "an allowable judgment" (*Siegel, supra*, p. 612) "as to the extent to which a particular violator should be fenced in" (*Mandel, supra*)—does not require further review by this Court. The Board found that petitioners participated in coercive conduct involving threats or violence on at least twelve separate occasions during a three-month period. The coercion was exerted not only against Company personnel but also against personnel from affiliated corporations who were assigned to assist in the Company's operation during the strike. Petitioners' misconduct was widely publicized. Although petitioner Local Union No. 4372 represents only the employees of the Company in the Portsmouth, Ohio area, its parent union (petitioner CWA) is a national organization and deals with employers throughout the country. As stated above, CWA supported the unlawful activities of Local Union No. 4372 and it was not unreasonable for the Board to anticipate that, unless restrained, CWA might extend similar support to other affiliated locals in disputes with other employers. Taking into account the illegal acts directed against the personnel of the related companies which came to the assistance of the Company and the extensive dealings of CWA with other employers, the Board could properly conclude that an appropriate order should protect not only the employees of the Company but also those of other employers.

Contrary to petitioners' contention (Pet. 17-20), the decision below is not in conflict with *National Labor Relations Board* v. *Local 926, International Union of Operating Engineers, AFL-CIO*, 267 F. 2d 418 (C.A. 5). The different results in the two cases do not involve any conflict in principle; they merely reflect the different "facts of each case and a judgment as to the extent to which a particular violator should be fenced in." *Mandel Bros., supra*, at 392.[3]

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[3] Petitioners complain (Pet. 15-17) that the Board's brief in the Court of Appeals referred to certain stipulations pursuant to which other cases were settled, as a basis for supporting the order. The Board itself did not rely upon these stipulations in its decision, and there is nothing in the opinion of the court below to suggest that the latter relied on them either.

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